

PERSON UNDER 28 USC § 2254 FOR WRIT
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District Massachusetts
Name	Prisoner No.	FILED RECEIVED OFFICE 62120 AMOUNT \$ 500
Place of Confinement MCI Shirley Medium Box 1218 Shirley, MA 01464		2005 FEB 13 A 9:59 LOCAL RULE 4.1 WAIVER OF SERV. U.S. DISTRICT COURT DISTRICT OF MASS. CLERK OF COURT BY EPT CLK DATE 2-15-05
Name of Petitioner (include name under which convicted) ROSARIO GUZZI	Name of Respondent (include name under custody of petitioner) MICHAEL THOMPSON	
The Attorney General of the State of: Massachusetts	05-10300 RWZ <i>Referred to New Magistrate Judge</i> PETITION	
<p>1. Name and location of court which entered the judgment of conviction under attack <u>Middlesex Superior Court</u> <u>40 Thorndike Street Cambridge, MA 02141</u></p> <p>2. Date of judgment of conviction <u>09-09-97 and 09-10-97</u></p> <p>3. Length of sentence <u>3-5 years from and after and 5 years probation thereafter.</u></p> <p>4. Nature of offense involved (all counts) <u>2 counts Intimidate Witness C. 268:013B and 4 counts Restraining Order Violation C. 209A:007 per Indictment MICR1996-01187; 2 counts Restraining Order Violation C. 209A:007 per Indictment MICR1997-01058.</u></p> <p>5. What was your plea? (Check one)</p> <p>(a) Not guilty <input checked="" type="checkbox"/></p> <p>(b) Guilty <input type="checkbox"/></p> <p>(c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:</p> <p>_____</p> <p>_____</p> <p>6. If you pleaded not guilty, what kind of trial did you have? (Check one)</p> <p>(a) Jury <input checked="" type="checkbox"/></p> <p>(b) Judge only <input type="checkbox"/></p> <p>7. Did you testify at the trial? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>		

9. If you did appeal, answer the following:

(a) Name of court Appeals Court, No. 1998-P-2229

(b) Result Rule 1:28 Order affirming lower court

(c) Date of result and citation, if known 01-28-02

(d) Grounds raised Ineffective assistance of counsel, misapplication of law to facts on all indictments excluding those indictments mentioned herein.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Middlesex Superior Court, MICR-1996-01187; MICR-1997-01058

(2) Nature of proceeding Motion for required finding of not guilty or a new trial alternatively, MRCrim.P. 25(b)(2).

(3) Grounds raised Misapplication to law as to essential elements, unreasonable application to establish federal law, due process error.

Appeal made to Appeals Court, No. 2003-P-1558, with result of
Rule 1:28 Order affirming lower court's denial of motion.

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☒ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Direct appeal of conviction never advanced beyond Appeals

Court.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Misapplication to law as to essential elements and
unreasonable application contrary to federal law thereto.

Supporting FACTS (state *briefly* without citing cases or law) Essential elements lacking per
the state statute and elements not contained in the indictments where
they are "presupposed" by the Commonwealth and not made clear elsewhere.

B. Ground two: State court's finding of harmless error in error wher it is
structural error in nature, implication due process violation.

Supporting FACTS (state *briefly* without citing cases or law): Indictment and conviction is
based upon facts not found and presented to the juries as such.

C. Ground three: Substantial risk of a miscarriage of justice.

Supporting FACTS (state *briefly* without citing cases or law): Legally insufficient evidence used to indict and convict defendant.

D. Ground four: Actual innocence of both indictments.

Supporting FACTS (state *briefly* without citing cases or law): Insufficient, essential elements utilized.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing John B. Shorton (DISBARRED 09-20-00)

(b) At arraignment and plea Same as item 15a.

(c) At trial John B. Shorton (DISBARRED 09-20-00)(d) At sentencing Same as 15c.(e) On appeal Dana Alan Curhan101 Arch Street, Boston, MA 02110(f) In any post-conviction proceeding None - pro se litigant.(g) On appeal from any adverse ruling in a post-conviction proceeding Same as 15f

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☒ No ☐

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

Middlesex Superior Court 40 Thorndike Street Cambridge, MA 02141(b) Give date and length of the above sentence: 09-10-97, a five (5) year probationary term upon discharge.

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Rosario Guzzi, pro se

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

01-31-05

(date)


Signature of Petitioner

Supreme Judicial Court for the Commonwealth of Massachusetts

John Adams Courthouse

One Pemberton Square, Suite 1400, Boston, Massachusetts 02108-1724

Telephone 617-557-1020, Fax 617-557-1145

Rosario F. Guzzi, Jr.
MCI Shirley Medium W-63283
P.O. Box 1218
Shirley, MA 01464

RE: Docket No. FAR-14523

COMMONWEALTH

vs.

ROSARIO F. GUZZI, JR.

Middlesex Superior Court No. MICR1996-01187
A.C. No. 2003-P-1558

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that on 02/02/05, the above-captioned Application for Further Appellate Review was denied.

Susan Mellen, Clerk

Dated: February 2, 2005

To: James W. Sahakian, A.D.A.
Rosario F. Guzzi, Jr.